

AMENDED IN SENATE MARCH 13, 2008

SENATE BILL

No. 1137

Introduced by Senators Perata, Corbett, and Machado

January 31, 2008

~~An act to amend Section 2924 of the Civil Code, relating to foreclosure. An act to add and repeal Sections 2923.5, 2923.6, 2924.8, and 2929.3 of the Civil Code, and to add and repeal Section 1161b of the Code of Civil Procedure, relating to mortgages, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1137, as amended, Perata. ~~Foreclosure.~~ *Residential mortgage loans: foreclosure procedures.*

(1) Upon a breach of the obligation of a mortgage or transfer of an interest in property, existing law requires the trustee, mortgagee, or beneficiary to record in the office of the county recorder wherein the mortgaged or trust property is situated, a notice of default, and to mail the notice of default to the mortgagor or trustor. Existing law requires the notice to contain specified statements, including, but not limited to, those related to the mortgagor's or trustor's legal rights, as specified.

Until January 1, 2013, and as applied to residential mortgage loans made on or before December 31, 2007, that are for owner-occupied residences, this bill would, among other things, require, prior to the filing of any notice of default, a mortgagee, trustee, beneficiary, or authorized agent to contact the borrower, or with due diligence attempt to contact the borrower, as specified, to conduct a meeting with the borrower, as defined, to assess the borrower's financial situation, provide the borrower with a list of HUD-certified housing counseling agencies in the borrower's geographic area, and explore options for

the borrower to avoid foreclosure. The bill would preclude the filing of a notice of default until 30 days after that meeting or, if a meeting has not been arranged, 30 days after satisfying specified due diligence requirements, and would, upon that filing, require the mortgagee, trustee, beneficiary, or authorized agent to include a specified declaration regarding the meeting or that the borrower has surrendered the property. If a notice of default had already been filed prior to the enactment of this act, the bill would instead require the mortgagee, trustee, beneficiary, or authorized agent, prior to the notice of sale, to contact the borrower, or with due diligence attempt to contact the borrower, as specified, to conduct a meeting between the above-described parties to assess the borrower's financial situation, provide the borrower with a list of HUD-certified housing counseling agencies in the borrower's geographic area, and explore options for the borrower to avoid foreclosure. Upon filing a notice of sale, the above-described declaration requirement would also apply. The bill would authorize a borrower to designate a HUD-certified housing counseling agency to discuss with the mortgagee, trustee, beneficiary, or authorized agent, on the borrower's behalf, options for the borrower to avoid foreclosure. The contact and meeting requirements of these provisions would not apply if a borrower has surrendered the property. The bill would also require specified mailings to the resident of a property that is the subject of a notice of sale.

Until January 1, 2013, this bill would require a legal owner to maintain vacant residential property purchased at a foreclosure sale, or acquired by that owner through foreclosure under a mortgage or deed of trust. The bill would authorize a governmental entity to impose civil fines and penalties for failure to maintain that property of up to \$1,000 per day for a violation. The bill would require a governmental entity that seeks to impose those fines and penalties to give notice of violation and an opportunity to abate at least 14 days prior to imposing the fines and penalties, and to allow a hearing for contesting those fines and penalties.

(2) Existing law governs the termination of tenancies and generally requires 30 days' notice of the termination thereof, except under specified circumstances. Existing law also establishes the criteria for determining when a tenant is guilty of unlawful detainer.

Until January 1, 2013, this bill would give a tenant or subtenant in possession of a rental housing unit that has been sold due to foreclosure, 60 days to remove himself or herself from the property, as specified.

(3) *This bill would set forth specified findings and declarations and intent provisions with regard to the above, and would provide that its provisions are severable.*

(4) *This bill would declare that it is to take effect immediately as an urgency statute.*

~~Existing law provides for the use of a mortgage or a deed of trust as security in a transfer of real property, provides for a power of sale upon breach of the obligation that a mortgage or deed of trust secures, and establishes specified procedures that a mortgagee or trustee is required to follow when exercising a power of sale.~~

~~This bill would make technical, nonsubstantive changes to that provision.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *The Legislature finds and declares all of the*
2 *following:*

3 (a) *California is facing an unprecedented threat to its state*
4 *economy and local economies because of skyrocketing residential*
5 *property foreclosure rates in California. Residential property*
6 *foreclosures increased sevenfold from 2006 to 2007. In 2007, more*
7 *than 84,375 homes were lost to foreclosure in California, and*
8 *254,824 households went into default, the first step in the*
9 *foreclosure process. Furthermore, hundreds of thousands of*
10 *residential property borrowers, including as many as 400,000*
11 *subprime borrowers with mortgages valued at over one hundred*
12 *billion dollars (\$100,000,000,000), could face foreclosure in the*
13 *next five years.*

14 (b) *High foreclosure rates have adversely affected property*
15 *values in California, and will have greater adverse consequences*
16 *as foreclosure rates continue to rise. A recent United States*
17 *Congress Joint Economic Committee report estimates that more*
18 *than twenty-three billion six hundred million dollars*
19 *(\$23,600,000,000) in property values will be lost over the next two*
20 *years in California because of foreclosures.*

21 (c) *The United States Conference of Mayors reports that, due*
22 *to the housing crisis, California cities may see a decline in*
23 *property, sales, and transfer taxes of nearly four billion dollars*

1 (\$4,000,000,000). More foreclosures means less money for schools,
2 public safety, and other key services. In addition, Los Angeles
3 could see an eight billion three hundred million dollars
4 (\$8,300,000,000) decline in economic output in 2008.

5 (d) Under specified circumstances, mortgage lenders and
6 servicers are authorized under their pooling and servicing
7 agreements to modify mortgage loans when the modification
8 maximizes the net present value of recoveries to the securitization
9 trust and is in the best interest of investors. That modification is
10 in the best interest of investors when the borrower's ability and
11 willingness to pay under the modified terms continues to produce
12 revenue for the investor, whereas a default on the loan and
13 foreclosure of the property causing significant financial loss to
14 the investor is likely to occur without a restructuring or other
15 modification of the loan.

16 (e) It is essential to the economic health of California for the
17 state to ameliorate the deleterious effects on the state economy
18 and local economies and the California housing market that will
19 result from the continued foreclosures of residential properties in
20 unprecedented numbers by modifying the foreclosure process to
21 require responsible parties to contact borrowers and explore
22 mutually agreed upon options that could avoid foreclosure. These
23 changes in the procedure for accessing the state's foreclosure
24 process are essential to ensure that the process does not exacerbate
25 the current crisis by adding more foreclosures to the glut of
26 foreclosed properties already on the market when a foreclosure
27 could have been avoided. Those additional foreclosures will further
28 destabilize the housing market with significant, corresponding
29 deleterious effects on the local and state economy.

30 (f) According to a survey released by the Federal Home Loan
31 Mortgage Corporation (Freddie Mac) on January 31, 2008, 57
32 percent of the nation's late-paying borrowers do not know their
33 lenders may offer alternatives to help them avoid foreclosure.

34 (g) As reflected in recent government and industry-led efforts
35 to help troubled borrowers, the mortgage foreclosure crisis impacts
36 borrowers not only in nontraditional loans, but also many
37 borrowers in conventional loans.

38 (h) This act is necessary to avoid unnecessary foreclosures of
39 residential properties and thereby provide stability to California's
40 statewide and regional economies and housing market by requiring

1 *early contact and communications between responsible parties*
2 *and specified borrowers to improve the long-term affordability of*
3 *those loans and by facilitating the modification or restructuring*
4 *of loans that would likely default otherwise.*

5 *SEC. 2. Section 2923.5 is added to the Civil Code, to read:*

6 *2923.5. (a) (1) Prior to the filing of a notice of default pursuant*
7 *to Section 2924, a mortgagee, trustee, beneficiary, or authorized*
8 *agent shall contact the borrower, or with due diligence attempt to*
9 *contact the borrower pursuant to subdivision (g), in order to*
10 *conduct a meeting with the borrower to assess the borrower's*
11 *financial situation, provide the borrower with a list of*
12 *HUD-certified housing counseling agencies in the borrower's*
13 *geographic area, and explore options for the borrower to avoid*
14 *foreclosure. Any meeting may occur telephonically.*

15 *(2) The mortgagee, trustee, beneficiary, or authorized agent*
16 *may not file a notice of default until 30 days after the meeting or,*
17 *if a meeting has not been arranged, 30 days after satisfying the*
18 *due diligence requirements as described in subdivision (g). The*
19 *mortgagee, trustee, beneficiary, or authorized agent may file a*
20 *notice of default if the borrower has canceled more than one*
21 *meeting scheduled pursuant to this section.*

22 *(b) As part of the notice of default filed pursuant to Section*
23 *2924, the mortgagee, trustee, beneficiary, or authorized agent*
24 *shall include a declaration that it has met with the borrower, tried*
25 *with due diligence to contact the borrower for a meeting as*
26 *required by this section, or the borrower has surrendered the*
27 *property to the mortgagee, trustee, beneficiary or authorized agent.*

28 *(c) (1) If a mortgagee, trustee, beneficiary, or authorized agent*
29 *had already filed the notice of default prior to the enactment of*
30 *this section and did not subsequently file a notice of rescission,*
31 *then the mortgagee, trustee, beneficiary, or authorized agent shall,*
32 *prior to filing a notice of sale pursuant to Section 2924f, contact*
33 *the borrower, or with due diligence attempt to contact the borrower*
34 *pursuant to subdivision (g), in order to conduct a meeting to assess*
35 *the borrower's financial situation, provide the borrower with a*
36 *list of HUD-certified housing counseling agencies in the*
37 *borrower's geographic area, and explore options for the borrower*
38 *to avoid foreclosure. Any meeting may occur telephonically.*

39 *(2) Upon filing a notice of sale pursuant to Section 2924f, the*
40 *mortgagee, trustee, beneficiary, or authorized agent described in*

1 *paragraph (1) shall also comply with the declaration requirements*
2 *of subdivision (b).*

3 *(d) A mortgagee's, trustee's, beneficiary's, or authorized agent's*
4 *loss mitigation personnel may participate by telephone at any*
5 *meeting required by this section.*

6 *(e) For purposes of this section, a "borrower" shall include a*
7 *mortgagor or trustor.*

8 *(f) A borrower may designate a HUD-certified housing*
9 *counseling agency to discuss with the mortgagee, trustee,*
10 *beneficiary, or authorized agent, on the borrower's behalf, options*
11 *for the borrower to avoid foreclosure. That discussion satisfies*
12 *the meeting requirements of this section. Any loan modification*
13 *or workout plan offered at the meeting by the mortgagee, trustee,*
14 *beneficiary, or authorized agent is subject to approval by the*
15 *borrower.*

16 *(g) For purposes of this section, "due diligence" shall require*
17 *and mean all of the following:*

18 *(1) A mortgagee, trustee, beneficiary, or authorized agent shall*
19 *first attempt to contact a borrower by sending a first-class letter.*

20 *(2) (A) After the letter has been sent, the mortgagee, trustee,*
21 *beneficiary, or authorized agent shall attempt to contact the*
22 *borrower by telephone at least three times at different hours and*
23 *on different days, including one call on a weekend. Telephone calls*
24 *shall be made to the primary telephone number on file. The*
25 *requirements of this subparagraph are not applicable if a meeting*
26 *that satisfies subdivision (a) or (c) has been arranged.*

27 *(B) A mortgagee, trustee, beneficiary, or authorized agent may*
28 *attempt to contact a borrower using an automated system to dial*
29 *borrowers, provided that, if the telephone call is answered, the*
30 *call is connected to a live representative of the mortgagee, trustee,*
31 *beneficiary, or authorized agent.*

32 *(3) If the borrower does not respond within two weeks after the*
33 *last communication by the mortgagee, trustee, beneficiary, or*
34 *authorized agent, and the first-class letter and telephone call*
35 *requirements have been satisfied, the mortgagee, trustee,*
36 *beneficiary, or authorized agent shall then send a certified letter,*
37 *with return receipt requested. This requirement is not applicable*
38 *if a meeting that satisfies subdivision (a) or (c) has been arranged.*

39 *(4) The mortgagee, trustee, beneficiary, or authorized agent*
40 *shall provide a means for the borrower to contact it in a timely*

1 manner, including a toll-free telephone number that will provide
2 access to a live representative during business hours.

3 (5) The mortgagee, trustee, beneficiary, or authorized agent
4 has posted a prominent link on the homepage of its Internet Web
5 site to its Web page, or pages, that contain the following
6 information:

7 (A) Options that may be available to borrowers who are unable
8 to afford their mortgage payments and who wish to avoid
9 foreclosure, and instructions to borrowers advising them on steps
10 to take to explore those options.

11 (B) A list of financial documents borrowers should collect and
12 be prepared to present to the mortgagee, trustee, beneficiary, or
13 authorized agent when discussing options for avoiding foreclosure.

14 (C) A toll-free telephone number for borrowers who wish to
15 discuss options for avoiding foreclosure with their mortgagee,
16 trustee, beneficiary, or authorized agent.

17 (h) Subdivisions (a), (c), and (g) shall not apply if a borrower
18 has surrendered the property as evidenced by either a letter
19 confirming the surrender or delivery of the keys to the property to
20 the mortgagee, trustee, beneficiary, or authorized agent
21 accompanied by other indicia of the borrower's intent to surrender
22 the property.

23 (i) This section shall only apply to loans secured by residential
24 real property made on or before December 31, 2007, that are for
25 owner-occupied residences.

26 (j) This section shall remain in effect only until January 1, 2013,
27 and as of that date is repealed, unless a later enacted statute, that
28 is enacted before January 1, 2013, deletes or extends that date.

29 SEC. 3. Section 2923.6 is added to the Civil Code, to read:

30 2923.6. (a) The Legislature finds and declares that any duty
31 servicers may have to maximize net present value under their
32 pooling and servicing agreements is owed to all parties in a loan
33 pool, not to any particular parties, and that a servicer acts in the
34 best interests of all parties if it agrees to or implements a loan
35 modification or workout plan for which both of the following apply:

36 (1) The loan is in payment default, or payment default is
37 reasonably foreseeable.

38 (2) Anticipated recovery under the loan modification or workout
39 plan exceeds the anticipated recovery through foreclosure on a
40 net present value basis.

1 (b) *It is the intent of the Legislature that at any meeting held*
2 *pursuant to subdivisions (a) or (c) of Section 2923.5, the*
3 *mortgagee, trustee, beneficiary, or authorized agent offer a loan*
4 *modification or workout plan if such a modification or plan is*
5 *consistent with its authority to mitigate losses.*

6 (c) *This section shall remain in effect only until January 1, 2013,*
7 *and as of that date is repealed, unless a later enacted statute, that*
8 *is enacted before January 1, 2013, deletes or extends that date.*

9 SEC. 4. *Section 2924.8 is added to the Civil Code, to read:*

10 2924.8. (a) *Upon filing a notice of sale pursuant to Section*
11 *2924f, a mortgagee, trustee, beneficiary, or authorized agent shall*
12 *also mail, at the same time, an envelope addressed to the*
13 *“resident” of the property containing the following notice in*
14 *English and the languages described in Section 1632: “Foreclosure*
15 *process has begun on this property, which may affect your right*
16 *to continue to live in this property. Twenty days or more after the*
17 *date of this notice, this property may be sold at foreclosure. The*
18 *new property owner may either give you a new lease or provide*
19 *you with a 60-day eviction notice. However, other laws may*
20 *prohibit an eviction in this circumstance or provide you with a*
21 *longer notice before eviction. You may wish to contact a lawyer*
22 *or your local legal aid or housing counseling agency to discuss*
23 *any rights you may have.”*

24 (b) *The outside of the envelope shall prominently state in English*
25 *and the languages described in Section 1632: “IMPORTANT:*
26 *Information contained in this letter may affect your right to live*
27 *in this property.”*

28 (c) *This section shall only apply to loans secured by residential*
29 *real property.*

30 (d) *This section shall remain in effect only until January 1, 2013,*
31 *and as of that date is repealed, unless a later enacted statute, that*
32 *is enacted before January 1, 2013, deletes or extends that date.*

33 SEC. 5. *Section 2929.3 is added to the Civil Code, to read:*

34 2929.3. (a) *A legal owner shall maintain vacant residential*
35 *property purchased by that owner at a foreclosure sale, or acquired*
36 *by that owner through foreclosure under a mortgage or deed of*
37 *trust. A governmental entity may impose civil fines and penalties*
38 *for failure to maintain the property of up to one thousand dollars*
39 *(\$1,000) per day for a violation. If the governmental entity chooses*
40 *to impose fines and penalties pursuant to this section, it shall give*

1 notice of violation and opportunity to abate at least 14 days prior
2 to imposing those fines and penalties and allow for a hearing and
3 opportunity to contest any fines and penalties imposed.

4 (b) For purposes of this section, “failure to maintain” includes
5 failure to adequately care for the property, including, but not
6 limited to, permitting excessive foliage growth that diminishes the
7 value of surrounding properties, failing to take action to prevent
8 trespassers or squatters from remaining on the property, or failing
9 to take action to prevent mosquito larva from growing in standing
10 water.

11 (c) Fines and penalties collected pursuant to this section shall
12 be directed to local nuisance abatement programs.

13 (d) These provisions shall not preempt any local ordinance.

14 (e) This section shall only apply to residential real property.

15 (f) The rights and remedies provided in this section are
16 cumulative and in addition to any other rights and remedies
17 provided by law.

18 (g) This section shall remain in effect only until January 1, 2013,
19 and as of that date is repealed, unless a later enacted statute, that
20 is enacted before January 1, 2013, deletes or extends that date.

21 SEC. 6. Section 1161b is added to the Code of Civil Procedure,
22 to read:

23 1161b. (a) Notwithstanding Section 1161a, a tenant or
24 subtenant in possession of a rental housing unit that has been sold
25 due to foreclosure shall be given 60 days’ written notice to quit
26 pursuant to Section 1162 before the tenant or subtenant may be
27 removed from the property as prescribed in this chapter.

28 (b) This section shall remain in effect only until January 1, 2013,
29 and as of that date is repealed, unless a later enacted statute, that
30 is enacted before January 1, 2013, deletes or extends that date.

31 SEC. 7. Nothing in this act is intended to affect any local
32 just-cause eviction ordinance. This act does not, and shall not be
33 construed to, affect the authority of a public entity that otherwise
34 exists to regulate or monitor the basis for eviction.

35 SEC. 8. The provisions of this act are severable. If any
36 provision of this act or its application is held invalid, that invalidity
37 shall not affect other provisions or applications that can be given
38 effect without the invalid provision or application.

39 SEC. 9. This act is an urgency statute necessary for the
40 immediate preservation of the public peace, health, or safety within

1 *the meaning of Article IV of the Constitution and shall go into*
2 *immediate effect. The facts constituting the necessity are:*

3 *In order to stabilize and protect the state and local economies*
4 *and housing market at the earliest possible time, it is necessary*
5 *for this act to take effect immediately.*

6 ~~SECTION 1. Section 2924 of the Civil Code is amended to~~
7 ~~read:~~

8 ~~2924. (a) Every transfer of an interest in property, other than~~
9 ~~in trust, made only as a security for the performance of another~~
10 ~~act, shall be deemed a mortgage, except when in the case of~~
11 ~~personal property it is accompanied by actual change of possession,~~
12 ~~in which case it shall be deemed a pledge. Where, by a mortgage~~
13 ~~created after July 27, 1917, of any estate in real property, other~~
14 ~~than an estate at will or for years, less than two, or in any transfer~~
15 ~~in trust made after July 27, 1917, of a like estate to secure the~~
16 ~~performance of an obligation, a power of sale is conferred upon~~
17 ~~the mortgagee, trustee, or any other person, to be exercised after~~
18 ~~a breach of the obligation for which that mortgage or transfer is a~~
19 ~~security, the power shall not be exercised except where the~~
20 ~~mortgage or transfer is made pursuant to an order, judgment, or~~
21 ~~decree of a court of record, or to secure the payment of bonds or~~
22 ~~other evidences of indebtedness authorized or permitted to be~~
23 ~~issued by the Commissioner of Corporations, or is made by a public~~
24 ~~utility subject to the provisions of the Public Utilities Act, until~~
25 ~~all of the following apply:~~

26 ~~(1) The trustee, mortgagee, or beneficiary, or any of their~~
27 ~~authorized agents shall first file for record, in the office of the~~
28 ~~recorder of each county wherein the mortgaged or trust property~~
29 ~~or some part or parcel thereof is situated, a notice of default. That~~
30 ~~notice of default shall include all of the following:~~

31 ~~(A) A statement identifying the mortgage or deed of trust by~~
32 ~~stating the name or names of the trustor or trustors and giving the~~
33 ~~book and page, or instrument number, if applicable, where the~~
34 ~~mortgage or deed of trust is recorded or a description of the~~
35 ~~mortgaged or trust property.~~

36 ~~(B) A statement that a breach of the obligation for which the~~
37 ~~mortgage or transfer in trust is security has occurred.~~

38 ~~(C) A statement setting forth the nature of each breach actually~~
39 ~~known to the beneficiary and of his or her election to sell or cause~~
40 ~~to be sold the property to satisfy that obligation and any other~~

1 obligation secured by the deed of trust or mortgage that is in
2 default.

3 (D) If the default is curable pursuant to Section 2924e, the
4 statement specified in paragraph (1) of subdivision (b) of Section
5 2924e.

6 (2) Not less than three months shall elapse from the filing of
7 the notice of default.

8 (3) After the lapse of the three months described in paragraph
9 (2), the mortgagee, trustee or other person authorized to take the
10 sale shall give notice of sale, stating the time and place thereof, in
11 the manner and for a time not less than that set forth in Section
12 2924f.

13 (b) In performing acts required by this article, the trustee shall
14 incur no liability for any good faith error resulting from reliance
15 on information provided in good faith by the beneficiary regarding
16 the nature and the amount of the default under the secured
17 obligation, deed of trust, or mortgage. In performing the acts
18 required by this article, a trustee shall not be subject to Title 1.6c
19 (commencing with Section 1788) of Part 4.

20 (c) A recital in the deed executed pursuant to the power of sale
21 of compliance with all requirements of law regarding the mailing
22 of copies of notices or the publication of a copy of the notice of
23 default or the personal delivery of the copy of the notice of default
24 or the posting of copies of the notice of sale or the publication of
25 a copy thereof shall constitute prima facie evidence of compliance
26 with these requirements and conclusive evidence thereof in favor
27 of bona fide purchasers and encumbrancers for value and without
28 notice.

29 (d) All of the following shall constitute privileged
30 communications pursuant to Section 47:

31 (1) The mailing, publication, and delivery of notices as required
32 by this section.

33 (2) Performance of the procedures set forth in this article.

34 (3) Performance of the functions and procedures set forth in
35 this article if those functions and procedures are necessary to carry
36 out the duties described in Sections 729.040, 729.050, and 729.080
37 of the Code of Civil Procedure.

38 (e) There is a rebuttable presumption that the beneficiary
39 actually knew of all unpaid loan payments on the obligation owed
40 to the beneficiary and secured by the deed of trust or mortgage

- 1 subject to the notice of default. However, the failure to include an
- 2 actually known default shall not invalidate the notice of sale and
- 3 the beneficiary shall not be precluded from asserting a claim to
- 4 this omitted default or defaults in a separate notice of default.

O